

Espinoza was responding to a question about whether he had an understanding in 1987 concerning the extent to which Trinity was willing to lend NMTV funds to purchase other stations. (Tr. 4268-70.) To this he replied, "Mr. Cohen, I'm sure there was some discussion, but I couldn't give you the content right now, sir." (Id.) Indeed, when asked whether he had ever discussed with anyone while he was a Director what the terms and conditions of a loan from Trinity to NMTV would be, Pastor Espinoza stated firmly, "Yes, sir. I remember at times I spoke with Mrs. Duff and we would cover different areas. Did we talk about it? Yes. I can't give you the substance right now. I honestly don't remember, sir." (Tr. 4276-77.)

130. Particularly astonishing is SALAD's claim that Pastor Espinoza "didn't know how much the Odessa station cost." (SALAD PFCL ¶31.) That representation completely ignores the following testimony:

"Q: Pastor Espinoza, do you know how much NMTV paid for the Odessa permit?

A: At the time I did. Right now, I couldn't tell you. I'm sure it's in here somewhere, but I couldn't tell you right now. No, sir.

Q: You can't even give me a ballpark figure?

A: No. No I couldn't sir.

Q: It wasn't \$500,000, was it?

A: I don't remember right now. I'm sure at the time, we talked about it. I knew, but right now, I couldn't tell you, sir." (Tr. 4355, emphasis added.)

Equally disingenuous is Glendale's assertion that "David Espinoza didn't recall ever having a copy of the corporate articles and bylaws." (Glendale PFCL I ¶137.) Reference to the cited testimony establishes that Pastor Espinoza could not remember whether he had been given a copy of these documents. (Tr. 4181.) However, he unequivocally remembered that he saw, reviewed, and familiarized himself with the bylaws and understood their significance. (Id.; TBF Ex. 106, p. 4.) These are but of few examples of how Glendale/SALAD have endeavored to portray Pastor Espinoza's present inability to recall details from years ago as a lack of knowledge at that time.

131. Equally untrustworthy are Glendale/SALAD's version of Pastor Aguilar's testimony and their "spin" on the knowledge and participation of Pastor Hill and Dr. Ramirez. For example, Glendale/SALAD provide a list purporting to reflect Pastor Aguilar's attendance at NMTV board meetings. (Glendale PFCL I ¶146.) Four of the meetings list him as "absent." (Id.) But Glendale/SALAD neglect to mention that in each instance, Pastor Aguilar was consulted about matters before and/or after the meetings, and that he consented in every instance to the Board's actions. (TBF PFCL ¶¶132, 134, 146.) Moreover, on several occasions not mentioned by Glendale/SALAD, Pastor Aguilar participated in meetings of the NMTV Board by conference call at which no minutes were taken. (Id. ¶137.) Indeed, Mrs. Duff recalled that there were three such meetings. (Id.) A Direc-

tor's service to the corporation cannot be measured solely by his or her participation at formal Board meetings.

132. Similarly, Glendale/SALAD claim that Pastor Hill knew "nothing" about NMTV's prior history before becoming a Director in 1991. (Glendale PFCL I ¶199.) That conclusion thoroughly misrepresents the cited testimony. Pastor Hill was not asked whether he knew anything about NMTV before he became a Director in 1991. He was asked whether he knew anything about NMTV's predecessor (TTI) before he first heard about NMTV, which was in 1988. (Tr. 2017-19.) Contrary to Glendale/SALAD's claim, Pastor Hill did know before he became a Director that NMTV was a minority controlled organization, that it was "buying up stations," that it had an affiliation with Portland, and that it owned a station in Odessa. (Tr. 2028.)^{15/}

133. Likewise, while acknowledging that Pastor Hill received from Mrs. Duff a list of LPTV stations, Glendale/SALAD claim that he "did not study it in depth." (Glendale PFCL I ¶206.) The cited testimony, however, establishes that Pastor Hill received from Mrs. Duff a cover letter that accompanied the list of stations. (Tr. 2050.) Although he could not remember

^{15/} Even if Glendale's characterization of Pastor Hill's testimony were accurate -- which it is not -- a new Board member, particularly one with Pastor Hill's breadth and depth of experience, can contribute effectively to corporate policy without examining minutes of past meetings to ascertain what actions the Board had already taken. Furthermore, Glendale fails to note that 1988 was the year that NMTV's first station commenced operating (TBF PFCL ¶32), which would explain why Pastor Hill might not have known of NMTV before then.

the cover letter, he recalled receiving the attached list of stations. (Id.) Contrary to Glendale/SALAD's representation, it was the cover letter -- not the attached list -- to which he did not recall giving "any in depth consideration." (Tr. 2051.) Glendale/SALAD also fault Pastor Hill for failing to recall at his deposition in 1993 the various details of NMTV's articles and bylaws, which he reviewed upon becoming an NMTV director in 1991. Thus, for example, Glendale/SALAD complain that Pastor Hill, one of the great minority leaders in America, was unable to recall the maximum or minimum number of directors permitted under the bylaws, the "bylaw provisions about proxies," or "whether the bylaws provided for committees." (Glendale PFCL I ¶197.) Similarly, Glendale/SALAD impugn Pastor Hill for not recalling which corporate offices were established in the bylaws. (Id.) Of course, Glendale/SALAD do not explain why anyone should be expected to remember such details in legal documents seen two years earlier. As discussed above, there was much that Pastor Hill did know, and he did participate in many decisions. Glendale/SALAD's effort to discredit his involvement by emphasizing his inability to recall details from documents he had reviewed years earlier provides no valid basis for discounting the depth of experience, perspective, and vision that Pastor Hill brought to the NMTV Board.

(C) Glendale/SALAD's Legal Argument Lacks Merit

134. From its wholly one-sided and substantively misleading rendition of the facts, Glendale/SALAD urge the conclusion that Pastor Espinoza, Pastor Aguilar, Pastor Hill, and Dr. Ramirez failed to perform at the "minimum" level of supervisory responsibility necessary to be considered true directors. This contention is wholly without merit.

135. As a threshold matter, there is no "bright-line" test for gauging a director's participation on a corporate board. The Commission recognizes that the day-to-day affairs of most broadcast entities are necessarily entrusted to the supervision of on-site managers. While directors unquestionably may not abdicate their oversight responsibility, the Commission has never sought to measure the participation of individual directors to determine whether they have shown an "acceptable" level of involvement. Glendale/SALAD try to extract such a standard from cases in which the Commission found total and complete abdication of responsibility and control over the licensee's affairs. However, those cases are readily distinguishable on their facts. Indeed, if anything, those cases establish a "minimum" standard that the NMTV Directors far exceeded in this case.

136. SALAD suggests that the involvement of NMTV's Directors should be measured against Carta Corp., 5 FCC Rcd 3696 (Rev. Bd. 1990). (SALAD PFCL ¶30.) Yet nowhere in that

decision did the Review Board address the issue of whether the principals of a broadcast licensee had ceded de facto control by failing to perform at some "minimum level of involvement of as corporate fiduciaries." Nor did the decision articulate a "minimum" standard against which the performance of corporate directors could be assessed.^{16/}

137. The central issue in Carta was whether a two-tiered applicant in a comparative hearing should have been awarded 100% quantitative integration credit for proposing to integrate its purportedly "active" general partner into full-time station management. Based on the pre-formation activities of the applicant's nominally "passive" principals, the Board deemed the two-tiered ownership structure a sham and held that the applicant was "at a minimum, unworthy of valuable and dispositive integration credit." 5 FCC Rcd at 3702 (¶18). The Commission affirmed, noting that the applicant had been formed --

"in a relatively casual manner by virtual strangers, who made little effort to investigate each other's backgrounds, their rights and obligations under the agreement, or the specifics of the proposal before entering into the agreement." Fresno FM Limited Partnership, 6 FCC Rcd 6998, 6999 (¶6) (1991).

^{16/} To the extent that SALAD's use of the term "corporate fiduciaries" suggests that NMTV's Directors failed to meet their obligations under the California Corporations Code provisions governing Non-Profit Religious Corporations, that suggestion is wrong. The duties and liabilities of directors of such corporations are set forth in Sections 9240, 9241, 9244 and 9417 of the Corporations Code. Reference to those provisions establishes that NMTV's Directors fully satisfied their "fiduciary obligations" under California law.

Here, in contrast, NMTV's directors were all familiar with one another when they joined the NMTV Board.^{17/} Thus, it is absurd to claim a similarity between the manner in which these Directors joined the NMTV Board and the patently fraudulent manner in which the Carta applicant was formed.

138. In any event, the integration criterion addressed in Carta pertains solely to the question of day-to-day management. The issue in this case is not whether TBN or Paul Crouch have maintained the strict passivity required of non-integrated investors in two-tiered entities seeking integration credit. Nor is the issue whether NMTV's minority Directors have shown sufficient involvement in NMTV's affairs to earn integration credit. Rather, the issue is whether NMTV's minority Directors have retained ultimate authority and control over NMTV's affairs. Carta is wholly inapposite.^{18/}

^{17/} When NMTV was first formed, Paul Crouch and Jane Duff knew one another from working together at TBN. (TBF PFCL ¶10, 15, 56-59.) Similarly, Pastor Espinoza and Dr. Crouch knew each other from Pastor Espinoza's production of a Spanish language program that had been broadcast weekly on Station KTNB since 1976. (TBF PFCL ¶16, 19, 84-85.) Pastor Aguilar, Pastor Hill, and Dr. Ramirez were also familiar with Dr. Crouch, Mrs. Duff, and NMTV at the time they agreed to become Board members. (TBF PFCL, ¶¶17, 123-24, 150-54, 169-72.)

^{18/} In a related decision not cited by SALAD, the Review Board disqualified another applicant for ceding de facto control under a written time brokerage agreement that delegated virtually total control over the station's basic operations to the time broker. Fresno FM Limited Partnership, 6 FCC Rcd 1570 (Rev. Bd. 1991). Here, in contrast, NMTV and its Directors at all times retained complete authority over the operations of its stations. The central question in this case is not whether NMTV ceded control to a third party, but whether the de jure involvement of
(continued...)

139. Glendale/SALAD's reliance on George E. Cameron Jr. Communications, 91 FCC 2d 870 (Rev. Bd. 1982), is likewise misplaced. (Glendale PFCL ¶590.) There the licensee was found under a separate "ineptness" issue to have completely abandoned its public interest responsibilities. The Review Board observed that from the outset the principals had evidenced --

"(1) a premeditated disinterest in the ongoing activities of the station, (2) a structural inability to competently direct the elementary affairs of a licensed broadcast station, and (3) a fatal propensity to elevate their respective private interests above the public interest which the Commission had reposed collectively in these....principals." 91 FCC 2d at 873 (¶5).

There was "massive evidence" that the principals had "willfully and knowingly delegated total control of the station" to a manager who had organized the licensee as an investment vehicle but who personally held no ownership stake in the partnership. Id. at 873 (¶6). Finding that the principals had always viewed themselves as "merely passive speculators assembled randomly....for joint venture purposes," the Board chronicled how various principals, including the company president, had each expressly disavowed all responsibility for, knowledge of, and involvement in the station's activities. Id. at 874-75 (¶6). The Board also recounted how the principals had failed to familiarize themselves with FCC rules and policies (Id. at 875 (¶7); "wholly disassociated themselves from licensee oversight

18/ (...continued)

TBN or Dr. Crouch under the minority ownership exception rose to the level of de facto control.

of the station and failed to accept any meaningful responsibility for general compliance" (Id. at 876 (¶8); failed to meet for over a year to discuss the station's faltering status (Id. at 877 (¶9); and had given the station manager carte blanche authority to manage the affairs of the station (Id.). The Board described how the principals had "disintegrated....into acrimony and recriminations" after learning about their liability for station debts. Id. at 878 (¶11). Additionally, the Board related how after learning of the station's financial disarray, the principals refused to take active part in management of the station or to contribute anything more toward its funding requirements. Thereafter, the licensee "collapsed into abject disarray and any semblance of coherent licensee control over KROQ essentially evaporated." Id. at 878 (¶12). The feuding principals "categorically refused to deal with each other" and several of them brought suit against the others in an effort to dissolve the company. Id. at 879 (¶12). Armed guards at one point were hired to prevent certain principals from entering the station premises, and ultimately the station went off the air and remained silent for two years after its staff walked out for want of payment. Id. at 879-80 (¶¶13-14).

140. Given these extreme circumstances, the Board determined that the licensee's principals had showed --

"no collective interest whatsoever in assuring that KROQ continued to maintain even token fidelity to its federal charter. Rather, the licensee principals preoccupied themselves exclusively in buffering themselves from the very responsibilities they had

assumed in seeking and accepting their broadcasting privilege." Id. at 882 (¶18) (emphasis added).

Accordingly, the Board concluded that the licensee's "deliberate abdication and the tangible consequences thereof warrant, at a minimum, a legal finding of 'carelessness' in the purest etymological sense: the licensee was simply 'without care.'" Id. at 882 (¶18).

141. In sum, Cameron involved a situation where chaos reigned and the principals' collective abdication of control was total. The principals in that case did not "simply rely upon one another to ensure the proper operation of the station," as Glendale/SALAD assert. (Glendale PFCL I ¶591.) To the contrary, they surrendered complete control to a non-principal station manager and thereafter individually and collectively denied all responsibility for station operations. Indeed, for a period of two years no one was in control while the station was off the air.

142. The facts in the instant case are readily distinguishable. Pastor Espinoza, Pastor Aguilar, Pastor Hill, and Dr. Ramirez have never viewed themselves as mere passive investors in a profit-making venture. Rather, they have always considered themselves to be active "owners" of a non-profit minority-controlled entity with ultimate responsibility for overseeing its operations. (TBF PFCL ¶¶88, 90, 119, 125-28, 131, 148, 154, 157, 170, 175.) Moreover, the NMTV Directors had

far more involvement in company oversight than did the totally passive principals in Cameron. (See ¶¶108-121 above.)

143. Likewise, Trustees of the University of Pennsylvania, 69 FCC 2d 1394 (1978), provides no support for the proposition that Pastor Espinoza, Pastor Aguilar, Pastor Hill, or Dr. Ramirez may be found to have abdicated de facto control. (Glendale PFCL ¶591.) In that case, the licensee was a non-profit corporation governed by a board of trustees who were ultimately responsible for the station's operations. Id. at 1401 (¶19). However, through a complex series of delegations and subdelegations, authority over the station's daily operations had been placed in the hands of student-run organizations. Id. at 1402-03 (¶¶20-22). Thereafter, for nearly an entire license term, the licensee failed to investigate and respond to a plethora of listener, staff, and student complaints and FCC inquiries regarding alleged station mismanagement and serious FCC rule violations. Finding that the licensee's governing structure had devolved to the point that the licensee had become either unable or unwilling to remedy these numerous and persistent problems, the Commission determined that the licensee's abdication of supervision and control had been "total" and warranted denial of license renewal. Id. at 1430 (¶76).

144. In typical fashion, Glendale/SALAD misleadingly suggest that the Commission in Trustees declined to renew the station's license merely because the licensee's directors had

failed to stay informed concerning the station's operations. (SALAD PFCL ¶42; Glendale PFCL I ¶591.) This grossly oversimplifies the Commission's rationale in denying the renewal. A more careful review of the case establishes that the Commission was concerned not so much with the Trustees' lack of knowledge or involvement in the station's affairs as with their prolonged failure to act in the face of numerous and serious inquiries and complaints. Indeed, the Commission expressly stated that --

"[s]tanding alone, this complex system of delegation of control and supervision ultimately to student organizations might not be a basis for denying renewal of WXPB(FM). Nor might the fact, amply borne out by the record, that the various individuals and groups having some authority over the station were unclear where their authority began and ended, be a sufficient basis for this denial." Trustees, 69 FCC 2d at 1403 (¶22) (emphasis added).

However, when coupled with the overwhelming evidence that its governing structure had rendered the licensee unable over an extended period of time to investigate and remedy the alleged deficiencies, the Commission determined that the absence of effective control and supervision had become intolerable.

145. This essential point was reiterated in the Commission's decision denying reconsideration, which neither Glendale nor SALAD bothered to mention. Trustees of the University of Pennsylvania, 71 FCC 2d 416 (1979). Seeking reconsideration, the licensee had argued that non-renewal was inappropriate because the Commission had never before taken away a license for deficient control unless substantive rule violations had also been committed in the actual operation of the station. In

response, the Commission explained that it "did not base denial of the WXPB(FM) application on lack of control standing alone or in vacuum." Id. at 417 (¶3). Rather, renewal was denied because of --

"[t]he extreme inadequacy of the licensee's oversight in this case and its failure to respond effectively to a host of complaints from various sources which were fully chronicled incident by incident for twelve pages in the opinion. (Decision at 12-24). Based on undisputed facts, we stated explicitly that gross abdication of the duty to respond and investigate when problems arose, as well as the virtually total abdication of control, required denial of renewal." Id. at 417 (¶4) (emphasis in original).

It is readily apparent, then, that the Commission was troubled more by the licensee's flawed governing structure and prolonged failure to address myriad complaints and inquiries than by the trustees' collective detachment from participation in station oversight. Indeed, the Commission twice observed that, standing alone, the trustees' lack of understanding and clarity about their authority might not have been sufficient grounds for denial of license.

146. Thus, Trustees actually makes clear that the NMTV Directors' participation in this case far exceeded minimum standards. Here, Pastor Espinoza, Pastor Aguilar, Pastor Hill, and Dr. Ramirez all were much more involved than were the university trustees in Trustees, whose complete non-involvement might still not have been disqualifying but for their prolonged failure to address serious complaints. Moreover, while some NMTV Directors could not recall details about NMTV's corporate

structure when they were cross-examined, they were clear about the fact that they looked to Jane Duff to manage the details of NMTV's day-to-day affairs while they retained ultimate responsibility for independently guiding the policies and direction of the corporation. (TBF PFCL ¶¶92-93, 119-121, 129, 148, 155-157, 161, 175.) Hence, NMTV's lines of authority were far clearer than those in Trustees.

147. The essential question posed by Glendale/SALAD's "minimum" standard is whether NMTV's Directors performed like the principals in Cameron and Trustees, whose complete abdication of all responsibility and control resulted in total chaos. A fair review of the entire record, not just the slanted and one-sided version offered by Glendale/SALAD, demonstrates that the performance of NMTV's Directors vastly exceeded that of the principals' in those cases. Thus, under the "minimum" standard created by Glendale/SALAD, it must be concluded that NMTV's Directors did not relinquish ultimate supervisory authority and control. The arguments to the contrary should be rejected.

b. Finances, Personnel, and Programming

148. Departing from what they once considered the central issue, Glendale/SALAD say little about who made the decisions regarding these matters. Instead, they substitute arguments that are internally inconsistent, contrary to law and the minority ownership policies, and factually groundless.

(1) Finances

149. Glendale/SALAD first argue that TBN controls NMTV's finances because TBN has provided the funds that have enabled NMTV to acquire, construct, and operate its stations. (Glendale PFCL I ¶569; SALAD PFCL ¶¶44, 51.) Without TBN's financing, they argue, NMTV would have been unable to pursue a project. (Glendale PFCL I ¶¶569-70; SALAD PFCL ¶54.) However, as indicated above (¶15), the minority ownership policy was established precisely because minority entities cannot obtain financing. The policy specifically recognizes that minority entities must depend financially on others if minority ownership is to develop. Accordingly, TBN's financing does not constitute de facto control of NMTV. See also authorities cited at TBF PFCL ¶¶631-32.^{19/}

150. Glendale/SALAD next argue that NMTV's monthly payments to TBN of \$27,000 are a "token" that "does nothing more than defer" NMTV's debt for five years. (Glendale PFCL I ¶570.) Thus, according to Glendale/SALAD, "the record in this case does

^{19/} Beside being completely wrong legally, Glendale/SALAD are not entirely accurate on the facts. As shown above (¶24), NMTV's operations have become profitable. While SALAD asserts that NMTV's network revenues result from a formula "imposed" by TBN (SALAD PFCL ¶53), NMTV merely earns the "standard" percentage of network revenues for affiliates not owned by TBN. (TBF Ex. 101, p. 41.) TBN-owned stations do not earn that percentage of network revenues, since TBN does control their finances. (See TBF PFCL ¶218.) Under SALAD's semantics, any affiliate earning standard network compensation from NBC, CBS, ABC, Fox, Univision, Home Shopping Network, Telemundo, etc., has had its revenues "imposed" by the network and has relinquished control of its finances.

not establish any basis for expecting that NMTV could free itself from its debt to Trinity Broadcasting Network." (Id.) Indeed, opines SALAD, NMTV can "never" free itself from its debt to TBN. (SALAD PFCL ¶53.) However, \$27,000 each month is more than a token, and debt reduction from \$5 million to \$3 million is more than deferral. Moreover, as previously shown (¶24 above), the record most certainly does establish NMTV's ability to pay the balance. In fact, the record establishes that NMTV will be able to satisfy its debt to TBN entirely from its accumulated cash profits without even relying on the substantial asset value of its properties.

151. Glendale/SALAD also erroneously claim that a standard default provision in the note NMTV executed in connection with the proposed Wilmington acquisition "evidences a desire on Trinity Broadcasting Network to assure its control of NMTV's corporate structure through finances." (Glendale PFCL I ¶570.) The provision in question is actually common in broadcast loans, and Glendale/SALAD are therefore working both sides of the street. First, they argue that TBN and NMTV are at fault because TBN's initial loans were made informally without standard commercial notes. (Glendale PFCL I ¶570; SALAD PFCL ¶¶51, 68.) Then they argue that TBN and NMTV are at fault for having a standard commercial note. They cannot have it both ways.

152. The circumstances of TBN's loans are entirely innocent. Formal notes were not prepared for NMTV's initial acquisitions (Odessa and Portland) because those unbuilt construction permits could not service debt immediately. (Tr. 2934.) Therefore, records of the loans were maintained, and the parties intended NMTV to repay them when the stations became viable. (TBF PFCL ¶222.) Since the Wilmington/Philadelphia acquisition involved an operating station in a major market, debt repayment could commence immediately, so a formal note was prepared. (Id. ¶221; MMB Ex. 368; Tr. 2934.)

153. The provision in the note that Glendale/SALAD cite is one of a series of common default provisions. (MMB Ex. 368, pp. 3-5.) It states that the note will be in default if the borrower (NMTV) sells the station or changes control of its Board. Such provisions are often included in commercial loan documents. For example, in David A. Davila (¶16 above) the Commission affirmed the conclusion of the Chief, Video Services Division, that a Construction Loan Agreement dated October 21, 1988, did not violate Section 310(d). The Agreement, which has been on file at the Commission since December 1, 1988, contained standard default terms which provided that (a) a transfer of the station licenses or control of the station, or (b) a change in control of the borrower, would constitute "Events of Default." [§§8.1(j) and (m).]

154. These standard provisions also were included in the June 8, 1987, Construction Loan Agreement that the Commission approved in The O.T.R.H., Inc. (§16 above). [§§8.1(k) and (n).] In The Seven Hills Television Company, supra, 2 FCC Rcd at 6880 (Rev. Bd. 1987), the Review Board cited the loan agreement in The O.T.R.H. as illustrating the provisions that are proper under Section 310 of the Act. These provisions are frequently used to protect creditors' rights in broadcast financing agreements and raise no questions of de facto control whatsoever. The Wilmington note plainly is a boilerplate document that contains common default provisions, precisely the type of commercial arrangement that Glendale/SALAD argue that TBN and NMTV must have in all instances. Nothing in the record suggests that the default provision resulted from any particular desire by TBN to control NMTV.^{20/}

^{20/} SALAD goes even farther in mischaracterizing the meaning of this standard default provision. It argues that "since TBN was providing all of the money, this provision would have enabled TBN to force NMTV to deliver the station to TBN whenever TBN found such an assignment convenient." (SALAD PFCL ¶68.) That argument is completely wrong. First, since the station was already built and operating, it would have a stream of operating revenue to satisfy the debt without borrowing further from TBN. Second, a default on the note would not "force NMTV to deliver the station to TBN." Rather, the note contains an equally standard provision that, in the event of default, the station would be sold "on an open market through a broker or at public or private sale." (MMB Ex. 368, p. 4.) That provision is required by the Commission in security documents and does not mean that the licensee delivers the station to the creditor. To the contrary, it means that the station is to be sold for the best available bid in accordance with Commission policy that precludes precisely the kind of retained interest that SALAD imagines. See, e.g., FCC Form 314, §II, Q. 16 (security documents must provide "in the event of default, there will be either a private or public sale of the stock").

155. Glendale/SALAD also erroneously argue that Norman Juggert prepared the Wilmington note. (Glendale PFCL I ¶304; SALAD PFCL ¶56.) Mr. Juggert specifically testified, "I didn't prepare that note," and explained that he had earlier confused the Wilmington note with NMTV's current note to TBN, which he did prepare. (Tr. 3955.)

156. Having argued that the standard commercial terms of the Wilmington note are improper, Glendale/SALAD then nimbly reverse field and criticize TBN's provision of business services to NMTV because they are not provided on standard commercial terms. (Glendale PFCL I ¶571.) For the reasons set forth in TBF PFCL ¶¶631-32, 634, and 676-77, a finding of de facto control based on TBN's charges for such services would be contrary to case law and unconstitutional. Contrary to Glendale/SALAD's contention, that arrangement shows nothing about who makes NMTV's decisions. Moreover, although Glendale/SALAD recite the services that TBN provides (Glendale PFCL I ¶261; SALAD PFCL ¶60), they ignore cases which hold that the provision of such services does not constitute control. See cases cited at TBF PFCL ¶634 and Hispanic Keys Broadcasting Corporation, 3 FCC Rcd 3584, 3585 (Rev. Bd. 1988) (authorization to sign checks does not establish influence or control). Very significantly, Glendale/SALAD also ignore the fact that NMTV at all times has held the bona fide business right to terminate TBN's provision of business services, a right by which NMTV

retains control of its finances. The Alabama Educational Television Commission, 33 FCC 2d 495, 508 (1972).

157. Finally addressing a single aspect of NMTV's decision-making, Glendale/SALAD state that Paul Crouch made decisions about construction and other engineering matters. (TBF PFCL ¶573.) However, still steadfastly disregarding Commission policy, Glendale/SALAD ignore the fact that the policy allows Dr. Crouch to function as an officer and Director of NMTV precisely to provide management and technical expertise to minority entities. The policy has no meaning if Dr. Crouch is barred from giving NMTV the benefit of his experience in such matters, as Glendale/SALAD contend. (See TBF PFCL ¶¶32 and n. 17.)

158. TBF PFCL ¶¶214-24, 590-600, and 628-36 accurately state the facts and the law on this subject and should be adopted.

(2) Personnel

159. Glendale/SALAD propose conclusions that misconstrue virtually everything about Commission policy and the facts on the personnel criterion. It therefore is not surprising that they do not cite a single authority to support their position. (Glendale PFCL I ¶¶574-78.)

160. Glendale/SALAD first try to downplay the record concerning NMTV's full power stations, arguing that "NMTV had a

relatively small staff consisting ~~only~~ of personnel responsible for the day-to-day operations of its two full power stations at Odessa, Texas and Portland, Oregon." (Glendale PFCL I ¶575; emphasis added.) In fact, Commission law is clear that the basic question regarding control of personnel under Section 310 of the Act involves control over the licensee's station staff. (TBF PFCL ¶¶614, 617-18, 620.) Here, the record establishes that both of NMTV's full power stations had sizable staffs and that NMTV's Board or Jane Duff have been responsible for all personnel decisions. (TBF PFCL ¶¶188-91.) The record also shows that Mrs. Duff's responsibilities for hiring and supervising the personnel of NMTV's stations are duties that she does not have for TBN. (TBF PFCL ¶615.) The record does not even begin to support a conclusion that TBN controls NMTV's station personnel.^{21/}

161. Glendale/SALAD's arguments that TBN or Dr. Crouch have controlled NMTV's station personnel show no such thing. Despite nearly four years of NMTV station operations and personnel decisions in Odessa, the only TBN involvement to which Glendale/SALAD can point is that Mrs. Duff sought a recommendation from Ben Miller concerning the "engineering qualifications"

^{21/} While the evidence does not show that Dr. Crouch controlled NMTV's personnel either, NMTV's Bylaws filed with the Commission when the Odessa application was granted vest in him as President "the power to select and remove all agents and employees of the corporation." (TBF PFCL ¶30.) Therefore, even had Dr. Crouch controlled NMTV's station personnel (which he has not), his doing so would constitute valid de jure conduct and not improper de facto control.

of the person she interviewed and hired. (Glendale PFCL I ¶576; SALAD PFCL ¶61; TBF PFCL ¶192.) Glendale/SALAD completely ignore all the other evidence concerning the Odessa personnel, including the number of people involved, the fact that none of them were TBN employees, and the overriding fact that Mrs. Duff has been responsible for supervising and approving the station hires. (TBF PFCL ¶¶189-90.)

162. Similarly, despite four years of NMTV station operations and personnel decisions through the time of hearing, the only TBN involvement in a personnel decision to which Glendale/SALAD can point is that Mrs. Duff obtained engineering references for the Chief Engineer from his TBN supervisors before she hired him. (Glendale PFCL I ¶576; TBF PFCL ¶193.) Glendale/SALAD again completely ignore the evidence concerning the number of people employed at Portland; the specific personnel decisions that NMTV's Board made; and Mrs. Duff's role in recruiting, hiring, and supervising station personnel and management, including her role in approving pay raises and bonuses. (TBF PFCL ¶¶188-89, 191.)

163. In these circumstances, the controlling Commission precedent is David A. Davila, ¶16 supra. There, the Commission held that a party's involvement in interviewing several station employees did not constitute control of personnel, where those employees and the remainder of station personnel were hired by the licensee's managing principal. (TBF PFCL ¶¶616-18.) A

finding of de facto control is even more inappropriate in this case, because TBN's assistance concerned technical advice, and the Commission's minority ownership policy specifically promotes such technical assistance to minority-owned stations. (Id. ¶616.)

164. Contrary to Glendale/SALAD's suggestion (Glendale PFCL I ¶577; SALAD PFCL ¶61), the fact that Messrs. McClellan and Fountain were TBN employees before NMTV hired them says nothing about who made the hiring decisions. Glendale/SALAD ignore the evidence establishing that Mrs. Duff recommended that Mr. McClellan be hired to the other NMTV Directors, who approved that recommendation, and that she made the decision to hire Mr. Fountain. (TBF PFCL ¶¶79, 188, 193.) Glendale/SALAD also ignore the evidence that Messrs. McClellan and Fountain are both highly qualified for their particular positions, Mr. McClellan because of his experience producing local and minority-oriented programs, his special rapport with members of the minority community, and his experience as a pastor, and Mr. Fountain because of his ability to work independently and to complete construction of a new station within the allotted time. (Id. ¶¶79, 193.) The record contains no evidence whatsoever that TBN or Dr. Crouch controlled the decisions to hire Messrs. McClellan and Fountain.

165. Similarly, Glendale/SALAD's challenge to the process by which NMTV hired these two employees (Glendale PFCL I ¶577;

SALAD PFCL p. 17, n. 8) proves nothing about de facto control. First, the fact that two known and qualified individuals were hired without other recruitment steps shows nothing about who made the decisions. Second, the challenge to two isolated hiring incidents is highly misleading since, at the hearing, Glendale/SALAD opposed NMTV's proffer of its complete employment history, which would have shown extensive recruitment, employment, training and promotions for minorities by NMTV, as well as a minority employment record that is many times higher than minimal compliance with Commission policies. At that point, Glendale/SALAD objected that "there is much text about employing, training and promoting minorities and I submit to you that that matter is absolutely collateral to the designated issues.... This....goes into the question of employing and training minorities and outreach activities to the minority community.... But it's clearly not relevant to the control issue." (§84 above; emphasis added.) Even despite Glendale/SALAD's objections, the record shows that NMTV very quickly managed to include six minority employees among its "relatively small staff," including hiring, training, and promoting a minority to Assistant Station Manager. (TBF PFCL ¶¶188, 191; Tr. 4433.)^{22/} Since Glendale/SALAD prevented NMTV from demon-

^{22/} During the hearing, Glendale represented that it was planning to ask Mr. McClellan about NMTV's minority Production Supervisor and Assistant Station Manager. (Tr. 4433.) Despite that stated intention, Glendale somehow neglected to mention that evidence in its PFCL.

strating its hiring processes, it cannot properly single out a small fraction of that process for consideration.

166. Glendale/SALAD's argument that NMTV never had any low power employees is a red herring. (Glendale PFCL I ¶576.) Because of the nature of translator and low power stations, few translator/low power licensees have employees. In fact, when it adopted the minority preference for translator/low power applications, the Commission specifically recognized that "the functional characteristics" of such stations do not require "extensive involvement in the operations of a particular station by any individual, whether owner or owner's employee." An Inquiry Into the Future Role of Low-Power Television Broadcasting and Television Translators in the National Telecommunications Systems, 51 RR 2d 476, 511 (1982). Instead of their own personnel, most translator/low power licensees employ contractors to maintain their facilities on an as needed basis. Since the Commission specifically recognizes that translator/low power operations generally have no personnel, there is no merit to Glendale/SALAD's contention that Section 310 was violated because NMTV does not employ a translator/low power staff.

167. The core of Glendale/SALAD's personnel argument concerns NMTV's provision of legal and engineering assistance to NMTV. Those matters are fully addressed at TBF PFCL ¶¶196-203 and 619-24. From their arguments, it is clear that Glendale/